

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207
Reply to E-mail:
bhall@hall-associates.com

July 9, 2015

Via FOIA Online

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street
Philadelphia, PA 19103-2029
Facsimile (215) 814-5102
Email: R3FOIA@epa.gov

Re: Freedom of Information Act Request for Records Associated with the Wissahickon Creek Watershed's EPA Region 3 Draft TMDL: Water Quality Modeling

To Whom It May Concern:

This is a request for a public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. Section 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages (including e-mails to and from personal e-mail accounts), minutes, handouts, policy statements, data, technical evaluations or analysis, and studies.

Background

The Wissahickon Creek located northwest of Philadelphia, PA is a tributary to the Schuylkill River. A draft total phosphorus ("TP") TMDL for the Wissahickon Creek Watershed was released by EPA Region 3 ("Region 3") in May 2015. According to the draft TMDL document, the TP endpoint used in the TMDL is based on a conceptual model wherein TP stimulates excessive algal growth that, in turn, adversely affects aquatic life (particularly macroinvertebrates). The justification for targeting TP in this TMDL is based upon three documents: Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application (November 20, 2007), Development of Nutrient Endpoints for the Northern Piedmont Ecoregion of Pennsylvania: TMDL Application – Follow-up Analysis (July 18, 2012), and Evaluation of Nutrients as a Stressor of Aquatic Life in Wissahickon Creek, PA (February 23, 2012). The Draft TMDL is based on modeling to meet the TP endpoint identified in the supporting documents. The water quality model also predicts algal growth and dissolved oxygen conditions in Wissahickon Creek.

Hall & Associates

Request

This request seeks records at Region 3 and/or in the possession of EPA's contractor, Tetra Tech, related to the TMDL, TMDL model, and the supporting documents concerning:

- 1) Records showing that phosphorus loads associated with storm-related stream flow (e.g., flows exceeding 200 cfs at Fort Washington; See, Draft TMDL Appendix C, Figure F-1 (illustrated below)) stimulate excessive algal growth in the Wissahickon Creek Watershed.

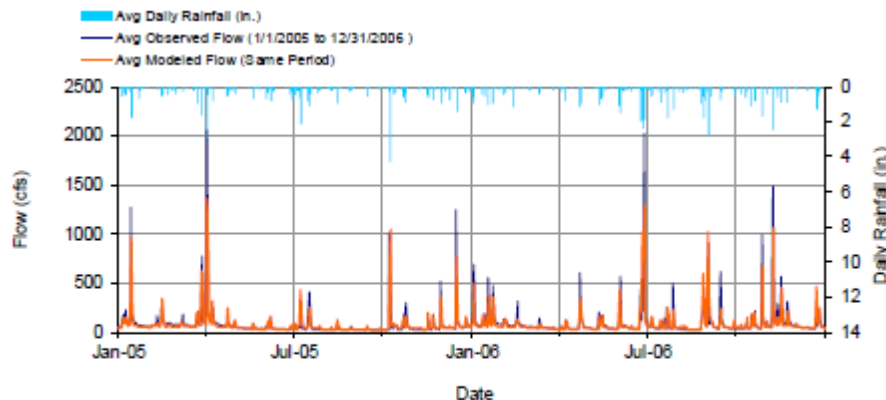


Figure F-1. Mean daily flow: Model Outlet 39 vs. USGS 01473900 Wissahickon Creek at Fort Washington, PA

- 2) Records showing the degree of aquatic plant scour associated with stream flows above 200 cfs in the Wissahickon Creek.
- 3) Records showing the amount of non-point source TP loading associated with flows exceeding 200 cfs.
- 4) Records showing the modeled particulate and dissolved inorganic phosphorus load entering and discharging from the Wissahickon Creek Watershed from MS4 and non-point sources following each rainfall event for the 2005/2006 Growing Season considered in setting the TMDL.
- 5) Records (including sampling data) showing the proportion of MS4 loading that is dissolved inorganic phosphorus and particulate phosphorus.
- 6) Records showing the amount of phosphorus entering the Wissahickon Creek Watershed during the non-growing season that is deposited into the sediment and reintroduced during the growing season. (See, Draft TMDL at 72. "The TMDLs are presented as annual loads, despite having a seasonal endpoint. This is because total phosphorus that enters the Wissahickon Creek and its tributaries during the non-growing season gets deposited into the sediment and can get reintroduced during the growing season.")

Hall & Associates

- 7) Records showing the amount of dissolved TP discharged from POTWs during the non-growing season that is retained in the Wissahickon Creek watershed.

In responding to this request, please do not provide the documents that are publicly available on the Region 3 website providing the public notice for this TMDL along with several supporting documents. If the information requested is contained in one or more of these website documents, please identify the document(s), the location on the website (e.g., Proposed TMDL PDF Portfolio), and the page number where the information can be found.

Hall & Associates, acting on behalf of the municipal entities subject to the proposed TMDL, is entitled to a waiver of fees for their FOIA requests pertaining to data and regulatory information used by Region 3 in the preparation of Total Maximum Daily Loads (TMDLs) for Wissahickon Creek. Under FOIA, a waiver or reduction of fees is required when a request's disclosure of the information is in the "public interest because it is likely to contribute significantly to public understanding" of government activities and "is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The act's legislative history clarifies that FOIA "is to be liberally construed in favor of waivers for non-commercial requesters" and that requests should be granted if the information disclosed is "new and supports public oversight of agency operations, including the effect of agency policy on public health." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284-1286 (9th Cir. 1987), *citing* 132 Cong. Rec. S 14298 (1986).

The information contained within the requested records is largely scientific data and regulatory information used by EPA in drafting TMDLs for Wissahickon Creek; as such, its disclosure by EPA is vital to informed public comment on the content and appropriateness of EPA's TMDL proposals by local governments and the broader citizenry. Moreover, this information should be part of the public record as it provides the foundation for the legal and scientific basis for the proposed TMDL. "[R]eview is to be based on the full administrative record that was before the Secretary at the time he made his decision." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971).

Hall & Associates, as the legal and scientific consultant to a broad coalition of municipalities operating wastewater treatment facilities and MS4 systems within the Wissahickon Creek watershed, is uniquely qualified to digest and disseminate this information to the public point source dischargers (POTWs, MS4s) affected by potential EPA TMDL development and implementation. Hall & Associates intends to use the released information from EPA to allow local governments and local citizens to comment

Hall & Associates

on EPA's proposed TMDLs in an informed and accurate manner. Without such information a full understanding of the need for this TMDL cannot be evaluated and, thus, the input from the affected public would be significantly hampered. Since Hall & Associates' FOIA requests are intended to serve the public interest and are not in the commercial interest of the requester, a waiver of fees should be granted.

Please duplicate the records that are responsive to this request and send it to the undersigned at the above address. If the requested record is withheld based upon any asserted privilege, please identify the basis for the non-disclosure.

If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that only the necessary document is duplicated.

Respectfully,

/s/ *William T. Hall*

WILLIAM T. HALL

Associate

Hall & Associates

1620 I St., NW, Suite 701

Washington, DC 20006-4033

(202) 463-1166

bhall@hall-associates.com